

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE: Joseph & Jackie Spegele)
Dist. B01, Block 59X, Parcel E00013) Shelby County
Residential Property)
Tax Year 2006)

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$60,000	\$287,000	\$347,000	\$86,750

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on June 20, 2007 in Memphis, Tennessee. In attendance at the hearing were Jackie Spegele, the appellant, and Shelby County Property Assessor's representative Jonathan Jackson.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a single family residence located at 9346 John Thomas Cove in Bartlett, Tennessee.

The taxpayer contended that subject property should be valued at \$327,850. In support of this position, the taxpayer argued that she purchased subject property on June 23, 2006 for the cash equivalent price of \$327,850.¹ In addition, the taxpayer appended to her appeal form a copy of an independent fee appraisal which valued subject property at \$337,500 as of June 13, 2006. Finally, the taxpayer asserted subject property contains 4,138 square feet of living area rather than 4,543 square feet as assumed by the assessor of property. The basis for this assertion was the appraiser's building sketch and area calculations.

The assessor contended that subject property should be valued at a minimum of \$347,000. In support of this position, Mr. Jackson entered into evidence a spreadsheet summarizing three comparable sales. Mr. Jackson maintained that the comparables support a value indication of \$375,600 after adjustments.

The assessor contended that subject property should be appraised assuming it contains 4,543 square feet. In support of this position, Mr. Jackson introduced a document prepared for the Shelby County Board of Equalization by staff appraiser Chris Copeland which indicated subject property contains 4,543 square feet.

The assessor also took issue with the taxpayer's argument that her purchase price represented market value. Mr. Jackson noted that the seller, Guaranty Insurance Corp., had

¹ According to the taxpayer, the recorded sale price of \$336,000 should be reduced by \$8,150 to reflect the seller's payment towards closing.

acquired subject property on May 9, 2006 for \$355,760 from Aurora Loan Services, LLC. Mr. Jackson asserted that the taxpayer's purchase was essentially a distressed sale.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should be valued at \$347,000 based upon the presumption of correctness attaching to the decision of the Shelby County Board of Equalization.

Since the taxpayer is appealing from the determination of the Shelby County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

The administrative judge finds that January 1, 2006 constitutes the relevant assessment date pursuant to Tenn. Code Ann. § 67-5-504(a). Thus, the administrative judge finds that the fair market value of subject property as of January 1, 2006 constitutes the relevant issue.

Respectfully, the administrative judge finds that the taxpayer's June 23, 2006 purchase of subject property cannot be adopted as the basis of valuation for any of several reasons. First, the administrative judge finds that the sale occurred after January 1, 2006 and is technically irrelevant. See *Acme Boot Company and Ashland City Industrial Corporation* (Cheatham County - Tax Year 1989) wherein the Assessment Appeals Commission ruled that "[e]vents occurring after [the assessment] date are not relevant unless offered for the limited purpose of showing that assumptions reasonably made on or before the assessment date have been borne out by subsequent events." Final Decision and Order at 3. Second, the administrative judge finds that one sale does not necessarily establish market value. As observed by the Arkansas Supreme Court in *Tuthill v. Arkansas County Equalization Board*, 797, S. W. 2d 439, 441 (Ark. 1990):

Certainly, the current purchase price is an important criterion of market value, but it alone does not conclusively determine the market value. An unwary purchaser might pay more than market value for a piece of property, or a real bargain hunter might purchase a piece of property solely because he is getting it for less than market value, and one such isolated sale does not establish market value.

Third, subject property sold for \$355,760 less than one month prior to the taxpayer's purchase and previously sold for \$356,000 on January 31, 2000. Fourth, the administrative judge finds that although subject property may have been "neglected" as stated by

Ms. Spegele, the appraisal report she relied on characterizes the deferred maintenance as “cosmetic in nature.”

The administrative judge finds that even if it is assumed *arguendo* that subject property contains 4,138 square feet of living area, the preponderance of the evidence supports the value adopted by the Shelby County Board of Equalization. It appears that the local board’s value was based on the \$347,088 mortgage in effect at the time of the taxpayer’s purchase.² Given the prior sales of subject property for \$355,760 on May 9, 2006 and \$356,000 on January 31, 2000, it appears that the local board tried to account for any loss in value attributable to deferred maintenance.

The administrative judge finds that the individual who prepared the appraisal report relied on by the taxpayer was not present to testify or undergo cross-examination. The administrative judge finds that the State Board of Equalization has historically refused to consider appraisal reports when the appraiser is not present. See *TRW Koyo* (Monroe Co., Tax Years 1992-1994) wherein the Assessment Appeals Commission ruled in pertinent part as follows:

The taxpayer’s representative offered into evidence an appraisal of the subject property prepared by Hop Bailey Co. Because the person who prepared the appraisal was not present to testify and be subject to cross-examination, the appraisal was marked as an exhibit for identification purposes only. . . .

* * *

. . . The commission also finds that because the person who prepared the written appraisal was not present to testify and be subject to cross-examination, the written report cannot be considered for evidentiary purposes. . . .

Final Decision and Order at 2.

The administrative judge finds that the taxpayer purchased subject property for a sworn consideration of \$336,000. The administrative judge finds that it is unclear from both the taxpayer’s testimony and settlement statement what constitutes the \$8,150 Ms. Spegele asserts should be deducted from the sale price.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2006:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$60,000	\$287,000	\$347,000	\$86,750

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

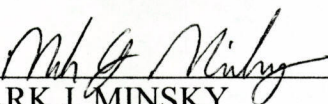
² See the “Mortgage Info” portion of Chandler Reports which was introduced into evidence as exhibit #1.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 27th day of June, 2007.



MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Joseph & Jackie Spegele
Tameaka Stanton-Riley, Appeals Manager